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No. 97-238

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

JUANA MUNIZ, *et al.*,

Petitioners,

vs.

COUNTY OF SOLANO,

Respondent.

On Petition for Writ of Certiorari to the Superior Court of California

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court exercise its discretionary jurisdictional powers to determine whether the courts of California erred in denying plaintiffs' various motions for reconsideration on the grounds that those denials involved violations of procedural due process under the Fifth and Fourteenth Amendments when those issues were not raised or considered by those courts?

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STATEMENT OF THE CASE

The underlying litigation which gives rise to this petition involved a personal injury claim against a public entity, County of Solano. County of Solano moved for summary judgment and, by order dated June 25, 1996, it was granted. A judgment was then prepared and submitted to the court, and was executed by the court on July 10, 1996. Notice of Entry of Judgment was served on petitioners on July 18, 1996.

On July 1, 1996, petitioners filed a Request for Reconsideration of the court's ruling on the motion for summary judgment. Petitioners also served Notice of Intent to Move for New Trial and to Vacate the Judgment. The trial court did eventually hear petitioners' motion for reconsideration and issued a ruling, denying the same.

Petitioners then filed a Notice of Appeal of the granting of the summary judgment on October 24, 1996. Defendant moved to dismiss as the appeal was not timely. Petitioners then responded to defendant's motion to dismiss. The appeal was subsequently dismissed as untimely. Petitioners petitioned to the Supreme Court, which denied review.

Petitioners have been provided with numerous opportunities to raise issues which are now argued in the Petition for Writ of Certiorari before this Court. In no prior brief or argument to any court of the State of California did petitioners raise an issue of federal due process. Quite obviously, since it was never raised, no court ever decided any question of federal law.

REASONS FOR DENYING THE WRIT

Petitioners' argument in support of their petition for writ of certiorari is that there is an important federal question which was decided by the state court. Petitioners assert that they were denied due process pursuant to the Fourth and Fifteenth Amendments due to the procedure followed by the courts of the State of California. In support of this claim, petitioners cite only to the case of *Pennoyer v. Neff*, 95 U.S. 714 (1877). The position of petitioners is that federal due process was violated due to the fact they were not given notice at the time judgment was entered.

I.

PETITIONERS HAVE FAILED TO SHOW ANY "COMPELLING REASON" WHICH WOULD JUSTIFY THE GRANTING OF THE PETITION FOR WRIT OF CERTIORARI.

> Review of a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons.

Rule 10 of the U.S. Supreme Court Rules.

Rule 10 essentially outlines the circumstances which are compelling and would justify a grant of review by the Supreme Court.

The Supreme Court does not sit to satisfy its scholarly interests or to consider issues which, in the abstract, may present intellectually interesting problems. (*Rice v. Sioux City Memorial Parks Cemetery,* 349 U.S. 70, 74, 75 S. Ct. 614, 616 (1955)). The principal purpose for which the Supreme Court uses its

certiorari jurisdiction is to resolve conflicts among federal courts of appeal and state courts concerning the meaning of provisions of federal law. (*Braxton v. United States,* 500 U.S. 344, 347, 111 S. Ct. 1854, 1857 (1991)).

A. No State Court has Decided a Federal Question.

In deciding whether the court should exercise its discretion and grant review, the court considers whether a state court or U.S. Court of Appeals has **decided** an important question of federal law that has not been, but should be, settled by this Court or has **decided** an important federal question in a way that conflicts with relevant decisions of this Court. (Rule 10(c) of the U.S. Supreme Court Rules.)

Petitioners' argument in support of their petition is devoid of any reference to any court deciding a federal question. Quite clearly, no court in California ever decided a federal question. It is only now that petitioners raise the issue regarding a federal question. "When the highest court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in the court can affirmatively show to the contrary." (*Exxon Corp. v. Eagerton,* 462 U.S. 176, 181 (1982), n. 3.) No court having ever considered or decided a question of federal law, petitioners' request for review by the Supreme Court must be denied.

B. Petitioners Never Raised a Federal Question in Any Court Below and, Therefore, Their Petition for Writ of Certiorari Must be Denied.

If the question raised in the petition was not raised below, then it will not be considered at the Supreme Court level. (*Ellis v. Dixon,* 349 U.S. 458, 460 (1955)). When a court has failed to

pass upon a federal question, the court will assume that it was due to the fact that it was not presented to that court, unless petitioner can show to the contrary. (*See Exxon Corp., supra.*) In the case presented, petitioners made no contrary showing. In fact, the record is clear that no federal law or question was ever raised prior to this petition.

In all the briefs drafted by the petitioners and during all requests made to the various court levels in the State of California, petitioners never raised any federal law or question.

Petitioners have failed to identify any place in the record where they raised to any court, or where the court may have relied on, any question of federal law. Petitioners merely make vague references to "due process;" however, the arguments being raised now were never raised at any court below.

Rule 14(g)(i) of the Rules of the Supreme Court makes clear what petitioners' obligations are. Pursuant to that rule, the petition must contain a concise statement containing the following:

> (1) specifications of the state in the proceedings, both in the court of first instance and the appellate court, when the federal questions sought to be reviewed were raised;
>
> (2) the method and manner of raising them;
>
> (3) the manner they were passed on by those courts; and
>
> (4) pertinent quotations of the specific portions of the record or summary thereof, with specific references to the places in the

> record where the matters appear, so as to show that the federal question was timely and properly raised, and this Court has jurisdiction to review the judgment on writ of certiorari.

Rule 14(g)(i) of the Rules of the U.S. Supreme Court.

Petitioners have failed to meet the specificity required by Rule 14. Petitioners have not shown with any amount of clarity when and what context a federal question was raised and considered by any state court. The rationale for this deficiency is obvious. No court has ever decided or considered any matter of federal law.

Based upon the foregoing, petitioners have failed to meet their burden under the Rules of the U.S. Supreme Court and the case law which establishes when there is a compelling reason to grant a petition for writ of certiorari. Accordingly, respondent respectfully submits that it would be inappropriate for this Court to exercise its discretion and assume jurisdiction of this case.

II.

PETITIONERS HAVE NOT BEEN DENIED ANY DUE PROCESS RIGHTS.

Respondent properly submitted to the trial court a judgment after the order on the motion for summary judgment was granted. Pursuant to the provisions of the California Code of Civil Procedure, respondent properly gave notice of entry of that judgment. (California Code of Civil Procedure § 664.5.) Once notice is received, there are various things that petitioners could have done in response to the entry of judgment. In fact,

petitioners did attempt to have the judgment set aside. California rules are extremely clear that the time in which an appeal must be filed starts ticking once the Notice of Entry of Judgment has been served. An appeal must be filed within thirty days after Notice of Entry of Judgment has been served. (California Rules of Court, Rule 122.) Once this is done, petitioner clearly knows what his obligations are. There is absolutely nothing stopping him from noticing the appeal. Petitioners merely slept on their rights and failed to diligently pursue his appeal.

The case of *Pennoyer v. Neff*, 95 U.S. 714 (1877), cited and relied upon by petitioners, is much different than the case now being presented. In *Pennoyer*, a party's substantive rights were affected without ever having received notice. Here, petitioners did receive notice; they just decided not to do anything about it.

The lack of notice petitioners complain of has nothing to do with the ultimate result of this case. Perceived lack of notice did not deny petitioners any rights. Petitioners had many options; they could have contested entry of judgment, which they did, or gone forward with the appeal, which they chose not to do.

Thus, respondent respectfully submits that these are additional grounds to support denial of the petition.

CONCLUSION

Petitioners' basis for jurisdiction, and statement and argument in support of granting the petition, are based on assumptions which are simply not supported by the record. By petitioners' own admission, it is by "implication" that the state courts decided an important federal question. (Petition for Writ of Certiorari at p. 5.) Implication is not sufficient. No court in California ever decided a federal question, nor was a federal question ever raised below. There is complete lack of any facts or law to support the existence of jurisdiction of this Court to hear the matter argued by petitioners. There has been no demonstration of any Fifth or Fourteenth Amendment federal questions which were properly raised or decided by any court. Additionally, all actions by the courts below have been reasonable and in accordance with any federal standard argued for by petitioners.

For all of the foregoing reasons, respondent respectfully submits that this petition should be denied.

Respectfully submitted,

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